

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

UNITED STATES OF AMERICA	)	CRIMINAL NO.
)	
	)	18 U.S.C. §§ 1343 and 2
v.	)	Wire Fraud
	)	(Counts 1-5)
)	
JOSEPH MCMURTRIE	)	18 U.S.C. §§ 1341 and 2
	)	Mail Fraud
	)	(Counts 6-16)
DEFENDANT,)	
	)	18 U.S.C. §§ 1956(a)(1)(B)(i)
	)	and 2
	)	Money Laundering
	)	(Counts 17-29)
)	
)	

INDICTMENT

October 6, 2004 Term - At Newport News, Virginia

GENERAL ALLEGATIONS

At all times relevant to this indictment,

1. Auction web sites eBay and Yahoo! are internet web sites used by individuals worldwide to buy and sell various goods including software, Digital Versatile Disks (DVDs) movies, electronics, computers, and other household goods.

2. PayPal is a service that individuals buying items via the internet can use to pay for products with a credit card or directly from their bank account. Individuals selling the products can receive the proceeds from the sale directly into their bank account. Individuals can control their PayPal accounts from their computers wherever they are located.

3. The defendant, JOSEPH MCMURTRIE, resided at 11317-2 Winston Place, Newport News, Virginia and controlled his eBay, Yahoo! Auctions, and PayPal accounts from his residence.

4. The defendant, JOSEPH MCMURTRIE, resided in Newport News, Virginia, and controlled a PayPal account 2047130035404064293 and a Bank of America (BOA) account 0041 3073 0712 located in Newport News, Virginia. The BOA was electronically linked to MCMURTRIE's PayPal account.

COUNT ONE

THE GRAND JURY CHARGES THAT:

1. From on or about December 12, 2003, to on or about July 3, 2004, in the Eastern District of Virginia and elsewhere, defendant, JOSEPH MCMURTRIE and others known and unknown to the Grand Jury, knowingly devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice, and the execution thereof, operated in substance as follows:

THE SCHEME AND ARTIFICE

2. The object of the defendant's scheme and artifice was to obtain monies by fraudulent means from persons seeking to use internet web sites and auction sites to buy various goods, including computer laptops and car stereo equipment.

3. It was a part of the defendant's scheme and artifice to create aliases, electronic mail (e-mail) addresses, and screen

names, to hide his true identity from the persons seeking to buy goods and from persons complaining about goods already bought.

4. It was further a part of the defendant's scheme and artifice to offer to sell and to sell through various internet web sites including internet auction sites, eBay and Yahoo!, goods that the defendant had no intention of supplying to buyers and, in some instances, goods that were different from the original auction and substantially less in value. The prices of the items offered in the online auctions ranged between fifty-nine dollars (\$59.00) to one thousand six hundred twenty-five dollars (\$1,625.00).

5. It was further a part of the defendant's scheme and artifice to make false promises indicating that the goods advertised and purchased would be delivered following receipt of a buyer's payment by money order or other similar means of payment including PayPal transfers.

6. It was further a part of the defendant's scheme and artifice that JOSEPH MCMURTRIE attempted to obtain money from various customers of eBay and Yahoo! auctions through false, fraudulent, and misleading representations, pretenses, and promises which were made to the victims to induce them to send checks, money orders, and wire transfers payable to JOSEPH MCMURTRIE's alias, COMP MAC. These false, fraudulent and misleading representations and promises include but were not limited to the following:

(a) That the laptop computers and car audio electronics listed on the eBay and Yahoo! auction web sites were brand new and fully functional, when in truth and fact, the defendant never sent

the laptop computers or car audio electronics listed in the online auctions.

(b) By presenting pictures of the laptop computers and car audio electronics listed on the eBay and Yahoo! auction web sites, the defendant created the false impression that items were available for sale.

(c) That the defendant intended to send the item won by the auction winner.

7. It was further a part of the defendant's scheme and artifice that JOSEPH MCMURTRIE caused victims to send payment by private and commercial interstate carrier, United States Postal Service (USPS), United Parcel Service (UPS), and via PayPal accounts.

8. It was further a part of the defendant's scheme and artifice that following the receipt of payment, the defendant would make false statements via e-mail to the buyer promising to ship the purchased item on or before a certain date, when the defendant then and there never intended to ship the product listed on the eBay and Yahoo! auction web sites, to the victim. In some instances, the defendant shipped goods different than the victim purchased including inexpensive car speakers valued between \$12.00 and \$20.00. This enabled the defendant to provide the buyer a UPS tracking number and the false impression that the item advertised and purchased was being delivered to the buyer. In truth and fact, this action provided enough time for the defendant to cash any financial instruments he already had in his possession and delayed

any complaints against him in order to receive additional monies from other victims.

9. It was further a part of the defendant's scheme and artifice that after receiving a series of payments from defrauded auction victims, the defendant in order to continue his scheme to defraud and avoid detection, would create a new user identification and account with the eBay and Yahoo! auction sites. These user names included but were not limited to web4bj and compmac4.

10. As a result of this fraudulent scheme and artifice, numerous persons bid upon, paid for, and purported to purchase from the defendant various merchandise which they never received or received items of lesser value, such as car speakers.

11. It was further a part of the defendant's scheme and artifice that JOSEPH MCMURTRIE instructed victims to pay for the auctioned items by Pay Pal, and in the form of money orders and cashiers checks payable to the order of Comp Mac an alias for MCMURTRIE, and sent to the Eastern District of Virginia through the United States mails and commercial carriers.

12. In furtherance of the scheme and artifice and to accomplish its object, the defendant JOSEPH MCMURTRIE did commit and caused to be committed the following acts, among others, in the Eastern District of Virginia and elsewhere:

13. On or about April 25, 2004, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, JOSEPH MCMURTRIE, in the Eastern District of Virginia, did knowingly cause to be transmitted by means of wire communication in

interstate commerce, certain signs, signals, and sounds, that is, an e-mail message from JOSEPH MCMURTRIE in Newport News, Virginia, in the Eastern District of Virginia, to Brian Leahy, Providence, Rhode Island, stating in substance that. "Brian, please put your worries at ease, you will receive exactly what you paid for and that is guaranteed. I will inform you when your payment arrives. Thanks".

(In violation of Title 18, United States Code, Sections 1343 and 2).

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. The factual allegations in Count One, Paragraphs 1 through 12 are hereby incorporated herein by reference as if set out in full.

2. On or about April 28, 2004, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, in the Eastern District of Virginia and elsewhere, JOSEPH MCMURTRIE did knowingly cause to be transmitted by means of wire communication in interstate commerce, certain signs, signals, and sounds, that is, an e-mail message from JOSEPH MCMURTRIE in Newport News, Virginia, to Mark Tomkiel in Phoenix, Arizona, stating in substance that "Your order has been processed. My distributor has processed your order straight from the warehouse. Heres your tracking number 1Z6V50780342747755. I am not sue if it will show in tracking, I have tried it myself, it is a valid tracking number," when in truth and fact, JOSEPH MCMURTRIE had shipped a pair of car speakers with a twenty dollar (\$20.00) price tag. MCMURTRIE shipped the speakers in place of the Alpine receiver and DVD/CD player that Mark Tomkiel had sent a money order in the amount of eight hundred forty dollars (\$840.00) to JOSEPH MCMURTRIE.

(In violation of Title 18, United States Code, Sections 1343 and 2).

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. The factual allegations in Count One, Paragraphs 1 through 12 are hereby incorporated herein by reference as if set out in full.

2. On or about May 7, 2004, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, in the Eastern District of Virginia and elsewhere, JOSEPH MCMURTRIE did knowingly cause to be transmitted by means of wire communication in interstate commerce, certain signs, signals, and sounds, that is, an e-mail message from JOSEPH MCMURTRIE in Newport News, Virginia, to Joshua Giauque, Salt Lake City, Utah, stating in substance that "sorry for the delay josh i was back and forth with my distributor with items but your tracking number is 1z6v5078034102585".

(In violation of Title 18, United States Code, Sections 1343 and 2).

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

1. The factual allegations in Count One, Paragraphs 1 through 12 are hereby incorporated herein by reference as if set out in full.

2. On or about May 8, 2004, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, in the Eastern District of Virginia and elsewhere, JOSEPH MCMURTRIE did knowingly cause to be transmitted by means of wire communication in interstate commerce, certain signs, signals, and sounds, that is, an e-mail message from JOSEPH MCMURTRIE in Newport News, Virginia, to Shervin Esfahani in Redland, California, stating in substance that "all orders was processed on Monday but didnt leave the suffolk wharehouse till late Wednesday/early Thursday sorry for the delay its all in the mail. thank you" when in truth and fact, JOSEPH MCMURTRIE had shipped a pair of generic red and blue box car audio speakers. MCMURTRIE shipped the speakers in place of the Alpine CD/MP3 car stereo receive that Shervin Esfahani had sent a money order in the amount of three hundred ten dollars (\$310.00) to JOSEPH MCMURTRIE.

(In violation of Title 18, United States Code, Sections 1343 and 2).

COUNT FIVE

GRAND JURY FURTHER CHARGES THAT:

1. The factual allegations in Count One, Paragraphs 1 through 12 are hereby incorporated herein by reference as if set out in full.

2. On or about May 8, 2004, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, in the Eastern District of Virginia and elsewhere, JOSEPH MCMURTRIE did knowingly cause to be transmitted by means of wire communication in interstate commerce, certain signs, signals, and sounds, that is, an e-mail message from JOSEPH MCMURTRIE in Newport News, Virginia, to Jennifer Capowski, Yonkers, New York, stating in substance that "no problem thank you. plse make money order out to comp mac and mail to 11317 #2 Winston Pl, newport news, va 23601. thank you".

(In violation of Title 18, United States Code, Sections 1343 and 2).

COUNTS SIX - FIFTEEN

THE GRAND JURY FURTHER CHARGES THAT:

1. During the period December 12, 2003, through July 3, 2004, in the Eastern District of Virginia and elsewhere, defendant, JOSEPH MCMURTRIE, along with persons known and unknown to the Grand Jury, devised and intended to devise a scheme and artifice to defraud through the use of the United States mails and by private and commercial interstate carriers to obtain money from various individuals who are members of the eBay and Yahoo! auction sites throughout the United States by means of false, fraudulent, and misleading pretenses, representations, and promises, which were false, fraudulent, and misleading when made. Said scheme and artifice to defraud is more particularly described in Count One, Paragraphs 1 through 12, and all the allegations contained therein are realleged and incorporated by reference for purpose of this count.

2. On or about the dates set forth below in the Eastern District of Virginia, JOSEPH MCMURTRIE, for the purpose of executing the scheme and artifice to defraud, and attempting to do so, knowingly and willfully caused to be placed in an authorized depository for mail matter to be sent and delivered by the United States Postal Service, according to the directions thereon, cashiers checks and money orders as follows:

COUNT	DATE	FROM: VICTIM	TO: ADDRESSEE	ITEM MAILED
6	3/22/04	Mihai Liptak, 601 Comstock Avenue #221, Syracuse, New York 13210	COMP MAC, 116 Harris Creek Road, Hampton, Virginia 23669	USPS Money order 92233525814 for \$816.10
7	3/25/04	Robert Reeves, 115 Mallard Point Drive, Woodbine, Georgia 31569	COMP MAC, 116 Harris Creek Road, Hampton, Virginia 23669	Cashier's check 000699 for \$825.00
8	4/23/04	Andrew Hara, 30 Whitfield Road, Somerville, Massachusetts 02144	COMP MAC 11317-2 Winston Place, Newport News, Virginia 23601	USPS Money order 05993663310 for \$109.95
9	4/23/04	Wanda L. Kowal, 8035 Vincent Road, Suite A, Denham Springs, Los Angeles 70726	COMP MAC 11317-2 Winston Place, Newport News, Virginia 23601	National Express Money order 0430009742 for \$119.50
10	4/25/04	Charles Harris, 216 Pleasant Street, Spindale, North Carolina 28160	COMP MAC 11317-2 Winston Place, Newport News, Virginia 23601	Traveler Express Money Order 76459907094 for \$187.51
11	4/28/04	Joshua Kassed, 74 Whatcheer Drive, Providence, Rhode Island 02914	COMP MAC 11317-2 Winston Place, Newport News, Virginia 23601	Cashier's check 123359 for \$910.00
12	4/28/04	James Maher, 140 Winthrop Parkway, Revere, Massachusetts 02151	COMP MAC 11317-2 Winston Place, Newport News, Virginia 23601	Cashier's check 887342770 for \$1,640.00
13	4/29/04	Mark Tomkiel, 3220 East Tonto Lane, Phoenix, Arizona 85050	COMP MAC 11317-2 Winston Place, Newport News, Virginia 23601	USPS Money order 06298299044 for \$840.00
14	4/30/04	Emilio Lopez, 9940 Marlin Road, Miami, Florida 33157	COMP MAC 11317-2 Winston Place, Newport News, Virginia 23601	Personal Money order 6003009 for \$809.95
15	5/3/04	Jennifer Capowski, 21 Normandy Road, Yonkers, New York 10701	COMP MAC 11317-2 Winston Place, Newport News, Virginia 23601	USPS Money Order 06593592870 for \$810.00

(All in violation of Title 18, United States Code, Sections 1341 and 2).

COUNT SIXTEEN

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations contained in Count Four, paragraph one are hereby incorporated herein by reference as if set out in full.

2. On or about May 5, 2004, in the Eastern District of Virginia, JOSEPH MCMURTRIE, for the purpose of executing the scheme and artifice to defraud, and attempting to do so, knowingly caused to be sent and delivered by private and commercial interstate carrier, namely United Parcel Service (UPS), under tracking number 1z6v50780342766770, a pair of car speakers with a sixteen dollar and ninety-nine cent (\$16.99) price tag addressed to Joshua Giaque, 5745 Whitewater Drive, Salt Lake City, Utah 84121. These speakers were sent in lieu of the Alpine in-dash car DVD player that Joshua Giaque had sent a money order in the amount of eight hundred sixty-nine dollars (\$869.00) to JOSEPH MCMURTRIE.

(In violation of Title 18, United States Code, Sections 1341 and 2).

COUNTS SEVENTEEN - TWENTY-SEVEN

THE GRAND JURY FURTHER CHARGES THAT:

On or about the dates set forth below, in the Eastern District of Virginia and elsewhere, the defendant, JOSEPH MCMURTRIE, did knowingly and willfully conduct and attempt to conduct a financial transaction in interstate commerce, to wit, the negotiation of cashiers checks and money orders for United States currency at America's Cash Express, which involved the proceeds of a specified unlawful activity, that is, Wire Fraud, in violation of Title 18, United States Code, Section 1343, and Mail Fraud in violation of Title 18, United States Code, Section 1341, with the intent to promote the carrying on of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, the defendant knew that the property involved in the financial transactions, described as the negotiation of cashiers checks and money orders for United States currency, represented the proceeds of some form of unlawful activities as set forth below:

COUNT	DATE	FINANCIAL TRANSACTION	AMOUNT OF U.S. CURRENCY NEGOTIATED
17	4/24/04	Negotiation for United States currency of money order number 0430009742 purchased by Wanda Kowal	\$119.50
18	4/27/04	Negotiation for United States currency of USPS money order number 06601180094 purchased by Juan Pellot	\$101.00

19	4/27/04	Negotiation for United States currency of money order number 08-112316849 purchased by John Murphy	\$200.00
20	4/29/04	Negotiation for United States currency of cashier's check number 123359 purchased by Joshua Kassed	\$910.00
21	4/29/04	Negotiation for United States currency of cashier's check number 10251232 purchased by George Dodig	\$799.95
22	4/29/04	Negotiation for United States currency of cashier's check number 3677495 purchased by Brian Leahy	\$899.00
23	5/1/04	Negotiation for United States currency of money order number 06298299044 purchased by Mark Tomkiel	\$840.00
24	5/3/04	Negotiation for United States currency of money order number 6003009 purchased by Emilio Lopez	\$809.95
25	5/3/04	Negotiation for United States currency of money order number 04-502509399 purchased by Joshua Giauque	\$869.00
26	5/4/04	Negotiation for United States currency of cashier's check number 887342770 purchased by James Maher	\$1,640.00
27	5/6/04	Negotiation for United States currency of USPS money order number 6593592870 purchased by Jennifer Capowski	\$810.00

(In violation of Title 18, United States Code, Sections 1956(a) (1) (B) (i) and 2) .

COUNT TWENTY-EIGHT

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 24, 2004, in the Eastern District of Virginia and elsewhere, the defendant, JOSEPH MCMURTRIE, did knowingly and willfully conduct and attempt to conduct a financial transaction in interstate commerce, to wit, the negotiation of USPS money order number 92233525814 for United States currency in the amount \$816.10 at Mr. Money Check Cashing, which involved the proceeds of a specified unlawful activity, that is, Wire Fraud, in violation of Title 18, United States Code, Section 1343, and Mail Fraud, in violation of Title 18, United States Code, Section 1341, with the intent to promote the carrying on of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, the defendant knew that the property involved in the financial transaction, represented the proceeds of some form of unlawful activity.

(In violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2).

COUNT TWENTY-NINE

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 24, 2004, in the Eastern District of Virginia and elsewhere, the defendant, JOSEPH MCMURTRIE, did knowingly and willfully conduct and attempt to conduct a financial transaction in interstate commerce, to wit, the negotiation of cashier's check number 000699 for United States currency in the amount \$825.00 at Mr. Money Check Cashing, which involved the proceeds of a specified unlawful activity, that is, Wire Fraud, in violation of Title 18, United States Code, Section 1343, and Mail Fraud in violation of Title 18, United States Code, Section 1341, with the intent to promote the carrying on of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, the defendant knew that the property involved in the financial transaction, represented the proceeds of some form of unlawful activity.

(In violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2).

SENTENCING ALLEGATIONS

1. The Grand Jury further finds that if the defendant JOSEPH MCMURTRIE is convicted of this indictment, he shall be subject to the following sentencing factors:

(a) As to the wire and mail fraud counts alleged in Counts 1 through 16, for purposes of Section 2B1.1.(b)(1)(D) of the United States Sentencing Guidelines the intended loss exceeded thirty thousand dollars (\$30,000.00).

(b) As to the wire and mail fraud counts alleged in Counts 1

through 16, for purposes of Section 2B1.1.(b)(2) of the United States Sentencing Guidelines the offense involved 10 or more victims.

(c) As to the wire and mail fraud counts alleged in Counts 1 through 16, for purposes of Section 2B1.1.(b)(3) of the United States Sentencing Guidelines the offense involved theft from the person of another.

(d) As to the wire and mail fraud counts alleged in Counts 1 through 16, for purposes of Section 2B1.1.(b)(8) of the United States Sentencing Guidelines the offense involved sophisticated means.

A TRUE BILL:

F O R E P E R S O N

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